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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of)
Alan W. Menard, et al.) Examiner: Merrick Dixon
for: DRUM ASSEMBLY FOR AN INTERNAL)
DRUM IMAGING DEVICE) Group Art Unit: 1774
Serial No.: 08/844,267)
Filed: April 18, 1997) Our Docket No.: I48-1123

Springfield, Massachusetts, November 2, 1999

OFFICE OF PATENT PUBLICATION and
OFFICE OF PETITIONS
Attn: Ms. Karna Cooper
Office of Patent Publication
Washington, D.C. 20231

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Patent Publication

PETITION TO WITHDRAW ABANDONMENT under 37 CFR §1.181(a) and MPEP
§711.03(C), or in the alternative, PETITION TO REVIVE ABANDONED
APPLICATION DUE TO UNAVOIDABLE DELAY under 37 CFR §1.137(a), or in the
alternative, PETITION TO REVIVE ABANDONED APPLICATION DUE TO
UNINTENTIONAL DELAY under 37 CFR §1.137(b)

I. PETITION TO WITHDRAW ABANDONMENT

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Ms. Cooper:

Pursuant to 37 CFR §1.181(a) and MPEP §711.03(C), Applicants respectfully request that the NOTICE OF ABANDONMENT, issued on October 1, 1999 in connection with the above-referenced application, be withdrawn in view of the circumstances and facts surrounding this holding of abandonment, as follows:

1. On April 9, 1999 a NOTICE OF ALLOWABILITY was mailed to Applicants (copy enclosed);
2. Also on April 9, 1999 a NOTICE OF ALLOWANCE AND ISSUE FEE DUE was mailed to Applicants setting a non-extendable three month time period for response (copy enclosed);
3. On July 7, 1999 Applicants transmitted the required Issue Fee which was received by the Patent Office on July 9, 1999 (copy enclosed);
4. On October 1, 1999 a NOTICE OF ABANDONMENT was mailed to Applicants citing Applicants' failure to timely file formal drawings 'as required in the Notice of Allowability' (copy enclosed).

Applicants request that the Abandonment of the present case be withdrawn due to the Primary Examiner's error in not indicating that formal drawings were required on the Summary page of the Notice of Allowability, and further, given the bona fide attempt to respond to the Notice of Allowability as evidenced by Applicants paying the required Issue Fee within the set time period, that the Primary Examiner again erred in issuing the Notice of Abandonment eight days prior to the six month time period, in conflict with MPEP §711.03(c) - citing 37 CFR §1.135(c) - and 37 CFR §1.134.

As can be seen with respect to the enclosed Notice of Allowability, there is no indication under PART II that formal drawings were then required. Although it is true that one sentence on page three indicates such, Applicants put great faith in the Examiner properly filling out the Summary page 1 of the Notice of Allowability so that proper forwarding to the respective docketing divisions can take place.

Given that the Primary Examiner properly filled out other sections of the Notice of Allowability concerning the Amendment received on March 30, 1999, the Interview Summary Record and the Reasons for Allowance, the Primary Examiner's failure to properly record the requirement for formal drawings was, in fact, the cause for Applicants failure to respond in the required time period. Formal drawings are now enclosed with the present Petition.

Moreover, MPEP §711.03(c) and 37 CFR §1.135(c) indicate that where there is a bona fide attempt by Applicant to make a proper reply, but some requirement has been inadvertently omitted, a new time period to reply may be given. Applicants assert that, at the least, it can be clearly seen that there was indeed a bona fide attempt to meet the requirements of the Notice of Allowability within the time period and strongly believe that they should have been afforded a new time period to supplement the reply with the inadvertently omitted material, which did not occur, especially given the Primary Examiner's error as noted above.

Lastly, 37 CFR §1.135(c) specifically cites 37 CFR §1.134 which states that 'unless the Applicant is required in writing that a reply is required in less than six months, a maximum period of six months is allowed'. Nowhere in the Notice of Allowability does the Primary Examiner indicate that a shortened statutory period for response for filing formal drawings was in effect, yet the Primary Examiner issued the Notice of Abandonment eight days prior to the six month time period. The Notice of Abandonment was therefore premature and improperly executed by the Primary Examiner.

Applicants therefore respectfully request that given the errors by the Primary Examiner as noted above and Applicants bona fide attempt at a complete reply to the Notice of Allowance, that the holding of Abandonment be withdrawn, the formal drawings entered and the case be forwarded to final printing.

It is believed that no additional fees or deficiencies in fees are owed with respect to this Petition to Withdraw Holding of Abandonment, however, authorization is hereby given to charge our Deposit Account No. 13-0235 in the event any additional fees are owed.

In the alternative:

II. PETITION TO REVIVE ABANDONED APPLICATION DUE TO UNAVOIDABLE DELAY under 37 CFR §1.137(a)

Applicants respectfully request that this petition to revive the above-referenced abandoned application due to unavoidable delay be granted. In accordance with 37 CFR §1.137(a), and in support of this Petition to Revive, the following information is supplied:

1. The required reply, in the present case the formal drawings of the application, are hereby attached;
2. The Office is hereby authorized to charge our Deposit Account No. 13-0235 for the petition fee according to 37 CFR §1.17(l), as well as any other fees required in association with the present petition;
3. In light of the following remarks, Applicants assert that the delay in filing the formal drawings in the present application was unavoidable. As indicated in MPEP §711.03(c), a showing of unavoidability is determined by the standard of a reasonably prudent person, i.e., Applicant is permitted to

"rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such and other means and instrumentalities as are usually employed ... If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present." *In re Mattullath*, 38 App. D.C. 497. 514-15 (1912).

Specifically, MPEP §711.03(c) states that 'a delay resulting an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that: (A) the error was the cause of the delay at issue; (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.'

In the present case the errors of the Primary Examiner in not indicating the requirement for formal drawings in the Notice of Allowability, as discussed above in detail in section I. Petition To Withdraw Abandonment of this Petition, directly caused the improper docketing of the application and was in fact the cause of the delay at issue.

Applicants have a longstanding business routine wherein clerical employees take careful note of the Summary page 1 of all Office Actions and forward the affected application in reliance thereupon. Applicants, therefore, rely greatly upon the Examiner's thoroughness in this regard, and given that such errors by Examiners, especially Primary Examiners as in the present case, are very infrequent, Applicants believe that reliance upon the Primary Examiner in this regard and the existing business routine can be reasonably be said to be representing the exercise of due care and diligence.

Moreover, as all other conditions which were noted upon the Notice of Allowability, such as payment of the Issue Fee, were addressed by Applicants within the applicable time period, and that the present Petition was filed promptly and within the two month time period, Applicants believe that the delay in providing the formal drawings may fairly be termed 'unavoidable' in accordance with MPEP §711.03(c).

Applicants therefore respectfully request that the application be revived due to unavoidable delay, the formal drawings entered and the case be forwarded to final printing.

It is believed that no additional fees or deficiencies in fees are owed with respect to this Petition to Revive beyond those mentioned above, however, authorization is hereby given to charge our Deposit Account No. 13-0235 in the event any additional fees are owed.

In the alternative:

III. PETITION TO REVIVE ABANDONED APPLICATION DUE TO UNINTENTIONAL DELAY under 37 CFR §1.137(b)

Applicants respectfully request that this petition to revive the above-referenced abandoned application due to unintentional delay be granted. In accordance with 37 CFR §1.137(b), and in support of this Petition to Revive, the following information is supplied:

1. The Office is hereby authorized to charge our Deposit Account No. 13-0235 for the petition fee according to 37 CFR §1.17(m), as well as any other fees required in association with the present petition;

2. The Issue Fee has been paid, as evidenced by the enclosed documentation;

3. Applicants' hereby states that the delay in filing the formal drawings in the above-referenced application was unintentional, as discussed in detail above, and that this Petition was filed promptly and within the applicable two month time period for such a Petition.

IV. CONCLUSION

In view of the facts and circumstances as detailed above, Applicants respectfully request that Petition To Withdraw Abandonment under 37 CFR §1.181(a) and MPEP §711.03(C) be granted, or in the alternative, that the Petition To Revive Abandoned Application Due To Unavoidable Delay under 37 CFR §1.137(a) be granted, or in the alternative, that the Petition To Revive Abandoned Application Due To Unintentional Delay under 37 CFR §1.137(b) be granted.

It is believed that no additional fees or deficiencies in fees are owed, however, authorization is hereby given to charge our Deposit Account No. 13-0235 in the event any additional fees are owed.

Respectfully submitted,

By 

Nicholas J. Tuccillo
Registration No. 44,322
Attorney for Applicants

McCormick, Paulding & Huber LLP
CityPlace II
185 Asylum Street
Hartford, Connecticut 06103-4102
(860) 549-5290